

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 250 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Nos. 1, 3 to 5 No

No.2 Yes.

HASMUKHABHAI KHELDHANKAR

Versus

S'NAGAR PEOPLE'S CO-OPERTIVE

Appearance:

MR MJ TRIVEDI for Petitioner

MR SHIRISH JOSHI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/09/98

ORAL JUDGEMENT

List has been revised five times. None appears for the revisionist. Shri Shirish Joshi, learned Counsel for the respondent has been heard and the material on record has been examined.

Shri Joshi raises preliminary objection that the

revision is not maintainable and he placed reliance upon Order 21, Rule 58(4) of the Code of Civil Procedure.

Brief facts are that in a money decree inter alia revisionist was also a judgment debtor. He was surety to the loan transaction. When the execution application was moved some property was attached. When it was going to be auctioned an application was filed by the revisionist in the executing court containing two main objections. The first was that the decree holder is proceeding to realise more amount than is recoverable under the decree. The second was that the property of the revisionist could not be attached and sold in execution of the decree against principal debtor.

The executing court observed that so far the calculation of the amount recoverable under the decree is concerned, it may be worked out on the execution side. Regarding second objection it held that there is no evidence to prove that the property sought to be auctioned actually belongs to the revisionist. It may be mentioned that the revisionist being a judgment debtor in the decree could not have moved objection under Order 21 Rule 58 of the Code of Civil Procedure. Such objection could be made only by a third party who was not a party to the suit. In this view of the matter, the objection under Order 21 Rule 58 of the Code of Civil Procedure itself was incompetent and it was rightly rejected by the executing court on merits also.

Rejection of such objection under Order 21 Rule 58(4) of the Code of Civil Procedure amounts to a decree and as such appeal is maintainable against an order rejecting objection under Order 21 Rule 58 of the Code of Civil Procedure. Revision under section 115 of the Code of Civil Procedure as such is not maintainable.

Order 21 Rule 58 (4) provides that where any claim or objection has been adjudicated upon under this rule the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

If such order is a decree within the meaning of Order 21 Rule 58(4) CPC, only appeal could be filed against the impugned order and not revision. Preliminary objection has therefore substance. For the reasons given above the revision is dismissed being incompetent. No order as to cost.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt